

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LARENDA L. THOMAS**

Claimant

VS.

**GENERAL MOTORS, LLC**

Self-Insured Respondent

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Docket No. 1,068,309

**ORDER**

**STATEMENT OF THE CASE**

Claimant appealed the April 2, 2014, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. Zachary A. Kolich of Shawnee Mission, Kansas, appeared for claimant. Karl L. Wenger of Kansas City, Kansas, appeared for the self-insured respondent.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the April 2, 2014, preliminary hearing and exhibits thereto; and all pleadings contained in the administrative file.

**ISSUES**

Claimant alleged injuries to the right upper extremity by repetitive trauma through January 10, 2014, arising out of and in the course of her employment with respondent. Claimant asserts her work activities were the prevailing cause of her injuries and need for medical treatment.

The ALJ denied the claim stating:

The claimant's right carpal tunnel condition was a preexisting condition and aggravations of preexisting conditions are not compensable according to K.S.A. 44-508(f)(2). The question remains whether the claimant's repetitive job duties were the prevailing factor in causing the new cubital tunnel syndrome.

While the claimant's job was repetitive, it did not sound like much force was involved installing the plugs and weather strip, and therefore very little, if any, trauma was being delivered to the claimant's elbow region. Based on the preliminary record, the

court tends to agree with Dr. Fevurly that this type of work would not cause nerve entrapment at the elbow.

It is held the claimant's repetitive job duties were not the prevailing factor in causing cubital tunnel syndrome. The claimant's request for medical benefits for right carpal and/or cubital tunnel syndrome is denied.<sup>1</sup>

Respondent asks the Board to affirm the ALJ.

The issues before the Board are:

1. Did claimant sustain a personal injury by repetitive trauma arising out of and in the course of her employment with respondent? Specifically:

A. Was claimant's right carpal tunnel syndrome not compensable solely because it aggravated a preexisting condition?

B. Were claimant's work activities the prevailing factor causing her right cubital tunnel syndrome and need for medical treatment?

2. Is claimant entitled to medical treatment, and reimbursement of unauthorized medical expenses?

#### **FINDINGS OF FACT**

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds:

Claimant has been employed by respondent since May 2006. When claimant began having right upper extremity symptoms in September or October 2013, she had worked in rocker panel installment for five or six years. That job required her to grab ten plugs out of a box and install them up under the body of the automobile. She used her index finger to press the plugs, which are approximately the size of a dime and as thick as a nickel, into place. Seven plugs go on the bottom, one on the front and two on the back of each automobile. She then grabs some weather strip and presses it into some of the holes. Claimant also places a clip on the automobile, but was not asked what that task entailed. She testified her job does not require a forceful grip, but uses some pressure to press the plugs into place. The job is extremely repetitive, as she installs 4,000 plugs during each shift. Claimant testified she is extremely right-hand dominant and only uses her left hand when using her right hand becomes unbearable. In a day, she installs the

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<sup>1</sup> ALJ Order at 2.

plugs, weather strip and clips on 350 to 400 automobiles. During the installation of the plugs and weather strip, claimant's arm is bent at the elbow.

Claimant testified her extracurricular activities were raising kids and grandkids and she had no hobbies.

Claimant testified she told her group leader, Mike Brown, about the symptoms in December 2013. Claimant was sent by respondent to Dr. Ira H. Fishman for an EMG. Dr. Fishman tested claimant's right upper extremity on January 9, 2014. His report stated:

Nerve conduction testing of the right upper extremity revealed evidence of a median mononeuropathy at the wrist, compatible with Carpal Tunnel Syndrome of mild severity by electrodiagnostic criteria. In comparison to the previous study performed on 02/15/11, this study revealed a slight improvement in the median nerve compression at the right wrist. This study, however, still revealed evidence of ulnar nerve entrapment at the right wrist (Guyon's Canal), and also Cubital Tunnel Syndrome of mild severity. There is no evidence of a peripheral neuropathy.<sup>2</sup>

Claimant testified she had pain in her entire right arm, numbness in her right wrist, tingling up the forearm as well as pain and tingling from the elbow to her shoulder.

Claimant had three prior workers compensation claims involving her upper extremities. In 2009, claimant made a claim for right carpal tunnel syndrome she had been doing the same work previously described. She had tingling in her right wrist and fingers, pain in her right wrist, but no tingling or numbness in her right elbow. Medical records from respondent's medical clinic indicate claimant first complained her right wrist was hurting on November 2, 2009. In 2010, claimant underwent a right carpal tunnel release. She returned to full duty on October 21, 2010, and settled her workers compensation claim. Claimant testified that between the time she settled the claim and when her symptoms began in 2013, she had "no real problems."<sup>3</sup>

Following her return to work on October 21, 2010, claimant continued to have right wrist symptoms. She was provided night splints and on October 22, 2010, Dr. Jesse W. Cheng at respondent's clinic, provided restrictions of limited grasping/gripping with the right hand. On November 19, 2010, Dr. Prem Parmar restricted claimant to not use power tools.

Claimant testified she also had a prior claim for left carpal tunnel syndrome. On March 9, 2011, Dr. Cheng diagnosed claimant with bilateral carpal tunnel syndrome. Dr. Cheng's April 29, 2011 notes state claimant returned for bilateral carpal tunnel syndrome and reported she did not get any better after her right carpal tunnel release. On June 17,

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<sup>2</sup> P.H. Trans., Cl. Ex. 2 at 2.

<sup>3</sup> *Id.* at 27.

2011, claimant underwent a left carpal tunnel release. She then returned to work on August 8, 2011, without restrictions. Claimant testified that during the course of her medical treatment for bilateral carpal tunnel, she never received treatment for her right elbow.

January 23, 2012 notes of respondent's medical clinic made by Jennifer Capuzelo-Kiel, R.N., indicate claimant complained her right fingers, palm, elbow and up to the shoulder hurt from putting in plugs on the underbody. That is the first mention of elbow pain in any medical records. On April 17, 2012, Dr. Cheng provided claimant with several diagnoses, including right elbow lateral epicondylitis and bilateral carpal tunnel type symptoms. On April 23, 2012, claimant complained to Dr. Frederick A. Buck at respondent's clinic about right elbow pain.

Claimant also had a prior workers compensation claim for right rotator cuff and SLAP tears. She underwent right-shoulder surgery on April 20, 2012. On October 15, 2012, claimant was allowed to return to work with the restriction of no power tool usage.

At the request of her counsel, claimant was evaluated by Dr. Edward J. Prostin on March 3, 2014. Dr. Prostin concluded:

From repetitive trauma during the course of her employment, Larenda L. Thomas has symptoms of right cubital tunnel syndrome and right carpal tunnel syndrome. . . . The repetitive minor trauma performed through January 10, 2014 while working for the General Motors Corporation is the prevailing factor in the injury, the medical condition, and the need for medical treatment.<sup>4</sup>

Claimant, at respondent's request, was evaluated by Dr. Chris D. Fevurly on March 6, 2014. He indicated claimant reported recurrent right carpal tunnel and median nerve entrapment complaints. The doctor noted there were current clinical symptoms, physical examination findings and an EMG abnormality consistent with right cubital tunnel syndrome. Dr. Fevurly opined claimant's work activity in the past year continued to be repetitive, but low force was required to push the plugs into the rocker panel holes. He then indicated that scientific studies showed that repetition alone with the absence of combined high force is not an adequate risk factor for the development of median or ulnar nerve entrapment. He attached a scientific article in support of his premise. The doctor concluded that the prevailing factor for the development of claimant's peripheral nerve entrapment was her age and elevated BMI. Dr. Fevurly also opined claimant's complaints are an aggravation of her preexisting condition.

The scientific article attached to Dr. Fevurly's report states: "Although in the past CTS was often considered an occupational illness, the recent medical literature **suggests**

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<sup>4</sup> *Id.*, Cl. Ex. 1 at 3.

**most** [emphasis added] cases previously labeled as occupationally related were neither caused nor aggravated by work.”<sup>5</sup>

#### **PRINCIPLES OF LAW AND ANALYSIS**

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>6</sup> “Burden of proof’ means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.”<sup>7</sup>

#### **Right Carpal Tunnel Syndrome:**

This Board Member agrees with the ALJ’s conclusion that claimant’s right carpal tunnel was a preexisting condition, and thus is not compensable according to K.S.A. 2013 Supp. 44-508(f)(2). The medical evidence indicates claimant’s right carpal tunnel syndrome complaints continued long after her 2010 right carpal tunnel release and returned to work. Admittedly, after her right carpal tunnel release, claimant was released to work without restrictions. However, from the time claimant returned to work on October 21, 2010, through January 10, 2014, when she saw Dr. Cheng, claimant had recurring right wrist symptoms. Moreover, Dr. Fishman indicated claimant’s January 9, 2014 EMG showed a slight improvement in her right median nerve compression since her prior EMG on February 15, 2011.

#### **Right Cubital Tunnel Syndrome:**

The ALJ found claimant failed to prove her work activities were the prevailing factor causing her right cubital tunnel syndrome and need for medical treatment. The preliminary hearing Order cites Dr. Fevurly’s opinion that claimant’s job, although repetitious, did not require sufficient force to cause claimant to develop cubital tunnel syndrome. This Board Member reverses the ALJ’s ruling on this issue.

The scientific article attached to Dr. Fevurly’s report contains qualifying language, and pertaining only to carpal tunnel syndrome not cubital tunnel syndrome. The article states that recent medical literature suggests most cases of carpal tunnel syndrome previously thought to be occupationally related were neither caused nor aggravated by

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<sup>5</sup> Craig Uejo, M.D., “Carpal Tunnel Syndrome - Occupationally Related or Not?” *The Guides Newsletter*, American Medical Association, (May/June 2009).

<sup>6</sup> K.S.A. 2013 Supp. 44-501b(c).

<sup>7</sup> K.S.A. 2013 Supp. 44-508(h)

work. The words “suggests” and “most” indicate that in at least some instances, carpal tunnel syndrome can be caused by work activities.

Dr. Fevurly’s conclusion that claimant’s work activities are not the prevailing factor for her right cubital tunnel syndrome ignores several important facts. Claimant worked in rocker panel installment for five or six years. Claimant would push 10 plugs into place on 350 to 400 vehicles each shift or 3,500 to 4,000 times each shift. In the course of one year, claimant would install well over 1,000,000 plugs. In addition, claimant installed clips and weather stripping. While performing her duties, claimant would primarily use her right upper extremity, which was bent at the elbow. The evidence in the record is that claimant’s activities outside of work did not cause her cubital tunnel syndrome.

Dr. Fevurly has chosen to rely on a questionable scientific article that theorizes repetitive work activities only in rare instances cause or aggravate carpal tunnel syndrome. Dr. Fevurly should have considered the type of activities performed by claimant, the number of times she performed those activities each day and year of her working life, the number of years she performed those activities and the cumulative effect her repetitive work activities had on her physical structure. The Board, Kansas appellate courts and the Kansas Legislature recognize there are injuries by repetitive trauma.<sup>8</sup>

Conversely, Dr. Prostic understands that repetitive minor traumas over an extended period of time can and does cause conditions such as cubital and carpal tunnel syndrome. This Board Member finds credible Dr. Prostic’s opinion that claimant’s work activities were the prevailing factor causing her cubital tunnel syndrome, medical condition and need for medical treatment.

By statute the above preliminary hearing findings are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>9</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>10</sup>

**WHEREFORE**, the undersigned Board Member modifies the April 2, 2014, preliminary hearing Order entered by ALJ Hursh as follows:

1. Claimant’s right carpal tunnel syndrome was a preexisting condition solely aggravated by her work activities and, therefore, is not compensable.

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<sup>8</sup> See K.S.A. 2013 Supp. 44-508(e).

<sup>9</sup> K.S.A. 2013 Supp. 44-534a.

<sup>10</sup> K.S.A. 2013 Supp. 44-555c(j).

2. Claimant's extremely repetitive work activities over an extended period of time during her employment with respondent were the prevailing factor causing her right cubital tunnel syndrome and need for medical treatment. The Board reverses the ALJ's finding that claimant's cubital tunnel syndrome did not arise out of and in the course of her employment with respondent.

3. This matter is remanded to ALJ Hursh to issue additional orders consistent with the above findings.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 2014.

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HONORABLE THOMAS D. ARNHOLD  
BOARD MEMBER

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Honorable Kenneth J. Hursh, ALJ